COMMUNICATION

INDUSTRIAL ARBITRATION IN AUSTRALIA

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Introduction

In modern history there is no more interesting and important phase than the relation the state has borne to industry. More particularly is this the case with regard to the last seventy years. During this period the state has changed its position and is hastening to regard industrial activities from an opposite viewpoint. At the beginning individualism was at the height of its influence, and at its dictates industry and trade were left untouched by legislation—interference of any kind was deemed harmful, searching interference fatal. At the end state activity, in large part, is concerned with the regulation and control of industry—regulation that becomes more general, control that becomes more stringent with time. The fundamental change in point of view may be regarded, abstractly, as due to the political theories which replace individualism. Socialism which embraces such a multitude of diverse theories in politics is at least definite in placing the community before the individual. Liberalism has enunciated that the progress of the community must be fostered through the welfare of the individual. State interference has been demanded by both: it extends further and further with sureness that is absolute, with speed that varies according to the obstacles it meets. In the Old World obstacles are many and severe. Dense populations, fixity of long-continued conditions, the prejudice of the past, together constitute an inertia that is incalculable. On the other hand, the statesmen of Australasia have had no such difficulties to overcome. A civilized life of one hundred and twenty years has not developed like conditions. It is not to be wondered, then, that here legislation goes further along the path of the world trend and achieves ends whose attempts in another, older,

community would be deemed experimental in a wild degree. Success must lead to the adoption of like principles elsewhere, adapted, of course, to meet special needs and circumstances. This is true in one direction particularly.

Modern-day industry is all too familiar with unrest. The conflicting interests of employers and employees provide ceaseless opportunity for disputes, with their attendant evils—crippled production and lost trade, far-reaching poverty with its accompanying crime. The direction of state activity to the source of these miseries has always formed a complex problem in statesmanship. On one hand stand the operatives, the great component of a community upon whose standard of moral and physical well-being depends the life of the whole body. On the other stands the body of employers, of as vital importance in industry, whose untrammeled activity is a prime necessity if a people is to progress on its economical side. Outside a given community stand its neighbors, competition with whom is a factor that can never be neglected. How, then, is state authority to proceed?

The interference of the state in industrial unrest has been very gradual. At first no general lines of action were laid down. The state proceeded of necessity with the great caution; it played a negative part. Individual cases of dispute were at first allowed to settle themselves, when necessarily victory went to the stronger of the opposed forces. Both such struggles were so crippling to both sides that each perceived the advantage of speedy settlement, even at a loss, to either or both, of previously held advantages. Industrial arbitration first makes its appearance when the counsels of an outside, disinterested authority are heeded by the disputants. Under certain circumstances the state supersedes the private arbitrator, but its offices are only exercised when quarrels have arisen and after failure of other attempts at reconciliation.

A close analogy is here to be noted with the first activities of the state in reconciling the differences of individuals—the beginnings of legal systems. From the attempts of the state to reconcile industrial disputes as they arise, obedience to whose suggestions for pacification is optional, it is a long step to the erection of tribunals to which quarrels may be brought by the parties of their own free will, but whose settlement, once invoked, is compulsory. The pro-

vision of such tribunals is a great advance, but may be rendered useless by the refusal of one party to submit its case. Industrial arbitration reaches the final stage it has presented when, in overcoming this difficulty, it becomes compulsory. In this stage disputes *must* be submitted to state arbitrament; further, even before open conflict springs into life, likely causes of future difference may be submitted by one party alone, for adjustment. In both cases the decision of the tribunal is binding.

Such is compulsory industrial arbitration in theory. In practice it is confronted with difficulties. The reconciliation of the conflicting interests of employers and employees is ever a question of the nicest delicacy; it is hardly possible to conceive a case in which the terms of settlement will be mutually acceptable. One party must make a sacrifice; and the question of inducing that sacrifice gives rise to the greatest difficulty that confronts compulsory arbitration—the means to be adopted for the enforcement of its authority. With regard to employers the matter seems easier of solution. They are, in comparison with the working population, few in number and more likely to be possessed of property that may be penally distrained. But with employees the matter is more difficult. If an award be given against them, obedience in the last resort can only be enforced by personal distraint. And the governmental body has yet to be discovered that would dare to seek enforcement of its dictates against a resisting community. Physically, obedience never could be enforced; it is only to be procured through moral suasion.

Compulsory arbitration, in this respect, stands on the same footing as the dispensing of state justice in its beginning, and must make good its position as the latter has done—by an educative process. Another difficulty is that which confronts all legislation for the amelioration of the working condition of the masses. Decrease of hours of labor, increase of wages means increased cost of production; and an advantage gained in the former recoils on the heads of the workers through the latter. Any action of the state to regulate directly the profits of capital and secure to the workers the benefit of bettered conditions will, it is said, lead to an evil great enough to prohibit the adoption of compulsory arbitration. This is advanced in the often used argument that capital will fly the country where the principles of compulsory arbitration are adopted.

That such difficulties as these are in great part academical, that they may be met in practice, a consideration of Australian legislation and its results will serve to show.

State Legislation

Before 1890, no attempt had been made by the government of any colony to cope with labor troubles by means of legislation. All that had been done was that official approval had been given to certain voluntary boards of conciliation set up by the Newcastle coal owners and coal miners. But in that year the Commission on Strikes in New South Wales reported as follows: "No quarrel should be allowed to fester if either party be willing to accept a settlement by state tribunal. . . . The state has a right in the public interest to call upon all who are protected by the laws to conform to any provisions the law may establish for settling quarrels dangerous to the public peace."

On the whole, these voluntary boards had failed as they have failed in other parts of the world under similar conditions. It was in 1890 and the following years that over the whole of Australia (and New Zealand) it was seen that urgent action of a new kind was necessary. Strikes and lockouts were growing in numbers and in cost, and the pressure of public opinion and the establishment of optional conciliation boards were of no avail in stemming the tide.

The great maritime strike of 1890 involved the whole of the colonial sea trade in Australia and New Zealand. For the first time in this part of the world street disturbances occurred in all the colonial capitals—in some the military were called out to intimidate the strikers. Destruction of property was a common occurrence, and at the Newcastle coal pits and at the Broken Hill silver mines work was stopped by sympathetic lockouts. As a result the owners were unconditionally victorious, but at great cost, considerably over £1,000,000.

Closely following this came the shearers' strike of 1891, beginning in Queensland and involving 10,000 men—the cause the same as that of the maritime strike, the refusal of the employers to countenance unionism and its principles. Arson and violence became common and the whole pastoral trade was dislocated. A similar strike occurred two years later, affecting the banking crisis

of 1893, whose evil effects were long felt, and this had been preceded by another Broken Hill strike.

These strikes were those that had the most far-reaching effects, but in every trade was felt unrest, evidenced in strikes, petty and important.

Legislative action was taken by most of the colonies. Queensland contented herself with a mere abstract resolution as to the advisability of state interference, combined with an act which was practically a dead letter. The wages board system was afterwards adopted by an act of 1908. South Australia and Victoria each passed acts providing for compulsory arbitration under certain conditions, which however were easily evaded by those whose interest it was to do so. These two colonies then turned their attention to the perfecting of a system of wages boards.

But in New South Wales, despite the principles laid down by the Commission on Strikes, all that was done was the establishment of state conciliation boards with an appeal to a state arbitration court, this by an act of 1892. But these boards entirely failed in their purpose—there was no compulsion and employers merely refused to appear. The same defect was apparent in the conciliation act of 1899, and at last in December, 1901, was passed a compulsory arbitration act, founded mainly on the New Zealand act of a similar nature which had, since 1894, been doing good work. A commissioner was despatched to New Zealand by the New South Wales government with the object of finding out exactly the merits and demerits of the system of compulsory arbitration in existence there. His report was completely favorable. Compulsory arbitration had by actual experience been productive of good in the following ways:

(1) It had prevented strikes of any importance, and had conduced to better relations between employers and employed.

(2) It had enabled employers to know with certainty the conditions of production and so to fulfil contracts.

(3) It tended generally to a more harmonious feeling among the people.

In addition the adoption of compulsory arbitration had by no means the effect of decreasing the material welfare of the colony.

So it was definitely decided to introduce such a system into New

South Wales. The prosperity of the state, temporarily under a cloud, was reviving, and with this the number of labor conflicts was again beginning to grow.

Under the new act there was no provision for conciliation boards. The arbitration court was to do the whole work of the law. Briefly the provisions of this act, which was to last till 1908, were as follows:

The court was to be composed of a judge and two assessors, one representing the employers and the other the trade unionists. Provision was made for security of tenure. Industrial unions were made into corporations. Trade unions would be included in the awards whether they registered themselves under the act or not. Only trade unions could be registered under the act as industrial unions.

Strikes and lockouts were prohibited during the reference of a dispute to arbitration. Violation of this section was attended by fine up to £1,000, or imprisonment for two months. No worker, under penalty of £20, was to be dismissed from his employment on account of being a unionist. Power was specifically granted to fix a minimum wage, and the court could order preference to be given to unionists. Power was also given to the court to make a common rule, that is an award could be given *in rem* and applied to the whole industry throughout the state. Exceptions could be made to this rule for the sake of aged and infirm workers. Penalty for a breach of an award, by either an employer or a union, was £500. Agreements made between employers and unions by order of the court or not, were not to last longer than three years. Power was also given to the registrar of the industrial court to intervene in a dispute and make it the subject of an award, though neither of the parties invoked the aid of the court.

Wages Boards.—Sweating and similar industrial evils became very pronounced in the Australian colonies after 1890, when financial depression was universal. The efforts of the legislatures to cope with these by compulsory arbitration have already been noticed. But certain colonies preferred to deal with them by another method. This was by the establishment of wages boards. The principle of a fixed minimum wage had been adopted by the Victorian House of Representatives in 1893, and in 1896 the shops and factories act had

been passed. By this act special boards could be appointed to fix wages and piecework rates for all trades and for certain factories. These boards were to consist of members, between four and ten in number, representing equally the employers and the employed. In default of their election, the governor in council appointed them (always so appointed the board in the case of the furniture trade to exclude the risk of Chinese representatives). Not only could the boards fix the minimum wage, but could deal with such matters as hours, overtime and apprentices. Provision was made for aged workers to be excluded from determinations. Child and female labor was also regulated by this act.

In 1899 the governor in council was authorized to appoint a special board to fix the minimum wage in any industry, and this provision has been largely taken advantage of.

On the whole it may be said that the system of wages boards has worked well. The determination of a wages board could only be questioned in the Supreme Court and had practically the force of law. Compulsory arbitration seemed to be scarcely necessary. So well did the system work that, in 1900, South Australia adopted it from Victoria almost in toto, expressly authorizing special rates for infirm workers.

The wages boards deal with the subjects of most strikes—rates of pay and number of working hours, but they still leave the risk of labor disputes, and the functions of the various wages boards must remain narrower than those of an arbitration court. They do not make strikes or lockouts illegal, nor do they take special account of labor unions. In the system of wages boards, too, as seen in Victoria, the initiative, the enforcement and even the overruling of awards rest with the minister of labor, the only appeal from whom is to the government. This might perhaps seem to be too paternal to be of lasting good. The main advantage they possess is that by them industry can be regulated without the semblance of any dispute or ill feeling. Although trade deputations have waited on the government requesting the introduction into Parliament of an arbitration bill, the acts of 1905, amended 1907 and 1909, are still in force in Victoria, and in South Australia there seems to be no tendency to change this system, amended as it is by a series of acts to 1909.

New South Wales Industrial Disputes Act, 1908.—At the expiration, in 1908, of the arbitration act, the industrial disputes act was passed combining the leading features of the wages boards system and that of compulsory arbitration. The preamble of this act is of interest as showing how far public opinion had advanced since the tentative resolution of the Royal Commission in 1890. It runs as follows: "An act to provide for the constitution of boards to determine the conditions of employment in industries, to define the powers, jurisdiction and procedure of such boards, and to give effect to their awards, and to appoint a court to prohibit lockouts and strikes and to regulate employment in industries; to preserve certain awards, orders, directions and industrial agreements, and for purposes consequent thereon or incidental thereto." The act provides the most complete regulation of the matters likely to lead to labor problems of any passed within the commonwealth.

Provision is made for the appointment of a registrar, who may register under this act any bona fide trade union or branch. A refusal to so register is subject to an appeal to the industrial court. Industrial unions duly registered under the act of 1901 are saved. The cancelling of a registration shall not relieve the industrial union from any penalty incurred. Industrial agreements as made under the act of 1901 are to continue to be so made enforceable in the same way as an award of a board under this act.

The industrial court shall consist of a judge, with or without assessors, appointed for seven years.

The minister shall, on the recommendation of the industrial court, following on the application of a trade union, industrial union, employer of at least twenty workers, or any twenty employees, direct a board to be constituted. This may even be done on the recommendation of the industrial court alone without any application. Such a board consists of not more than four members equally representing employers and employed, and a chairman. The representatives of the employees must be bona fide workers, but this qualification is not insisted on in the cases of certain special industries. All members of the wages board are appointed for a term of two years by the governor on the recommendation of the industrial court, which also nominates the chairman if the parties can agree upon such. A penalty is provided for the non-fulfillment of his

duties by any member of a wages board. Upon his appointment each members takes an oath not to divulge trade secrets or financial situations which shall come under his notice. The constitution of a wages board cannot be challenged by a prohibition or otherwise.

Such boards have jurisdiction over disputes referred to them by the industrial court, by a trade or industrial union, by an employer of more than twenty workers, or by at least twenty operatives in any industry. Though the union is considered as the economic unit, yet the privileges of labor legislation are not confined to members of these alone. It is not obligatory by the act that preference should be granted to unionists. More particularly the matters dealt with by these boards concern wages, overtime, holidays, the limitation of apprentices, and special rates for old and infirm workers. The awards are to be for periods not exceeding three nor less than one year, and are considered binding on publication in the Government Gazette. The chairmen of the boards have the fullest powers of inspection as well of premises as of the books of any industry. They may dismiss any application as trivial if the facts so warrant. Appeal lies from the boards to the industrial court by leave of the latter. The minister of labor may bring an appeal from an award of a board or intervene during the course of a sitting if he thinks that public interests may be affected.

As to the enforcement of awards, the act provides: Any person working in an industry for which the wages have been fixed by a board, by an industrial agreement, or by the court, shall be paid in money the full amount due to him, and this may be recovered although there be an agreement to the contrary.

The instigation or taking part in a lockout or strike renders the offender liable to a £1,000 fine or two months imprisonment. If a person convicted under this section belongs to a union that union is liable to the extent of £20 unless all reasonable means have been used by it to prevent the offence. This term of imprisonment has been increased by an act of 1909 to a period of twelve months. By this act, passed during the course of the late Newcastle coal strike, in the face of strong and bitter opposition by the labor representatives in the New South Wales Parliament, such a term of imprisonment may be inflicted as the result of a trial before a judge alone.

There are other provisions in this act, too, which cause it to be

regarded with extreme dislike by the political labor party. Thus, if any sergeant of police believes that a building is being used for a meeting to instigate a strike or lockout, he may enter such building by force and seize documents suspected to relate to such contemplated strikes or lockouts. A meeting of two or more persons is declared unlawful when it assembles to instigate or direct a strike or lockout, when such is in respect of a necessary commodity, this latter is defined as including coal, gas, water and any article of food, deprivation of which may endanger human life. Persons taking part in such a meeting, where they believe that the probable result of a strike or lockout will be to deprive, to a degree, the supply of a necessary commodity, are liable to imprisonment for twelve months. The penalty for a contract or combination in restraint of trade is £500, while the penalty for monopoly or attempt at monopoly, with the intent to control the price or supply of a necessary commodity, is the same.

Returning to the act of 1908, the penalty for the breach of a wages board award or order of the court of arbitration (made under the 1901 act) is £50, while an employer is forbidden to dismiss an employee for being a member of a board or a trade union, or for being entitled to the benefit of an award, under a penalty of £20 for each employee so dismissed. Proceedings for such offences against the act are to be taken in the industrial court, the penalties attached to be recoverable in any court of summary jurisdiction. Any decision of the industrial court is final and cannot be challenged by any court of judicature. Provision is also made for the compulsory keeping by the employers of time sheets and pay sheets; for the appointment of inspectors under the act; for the taking of security for the due performance of an award; and for a continuance of the present conditions of labor during proceedings before a board.

In Western Australia, acts on similar lines to the New South Wales Act of 1901 were passed in 1902-9, but in these laws provision was made for the establishment of boards of conciliation. These latter do not work well and the tendency is to go direct to the arbitration court under the acts.

Thus in New South Wales and in Western Australia industrial arbitration has been relied on to obtain peaceful conditions; but in the former state a system of wages boards has been conjoined. In

Victoria, Queensland and South Australia the wages boards appear to be working well, as industries there show. In Tasmania no legislation on the subject has been attempted.

Commonwealth Legislation

With different systems of industrial arbitration prevailing in different states, it is evident that the terms of awards by the tribunals of one state may differ greatly from those of awards in relation to the same trades in another state. From this difference, the manufactures of one state would naturally enjoy an advantage over those of another, despite the tendency towards similar awards which was a result of the uniform customs tariff under which the states came in 1901. It was with a view to avert this possibility that the Arbitration Court of New South Wales, under the act of 1901, refused to raise the rate of wages in a certain trade above those awarded to the operatives in the same trade in Victoria. An attempt has been made to meet properly the lack of uniformity by a bill introduced into the federal parliament to provide for the establishment of an interstate commission—a permanent quasi-judicial body having for its object the settlement of matters of mutual interest to the states. In this proposed act provision is made for a federal court to adjust differences arising between the awards of the arbitration tribunals of the states. Pending the establishment of such a court as an adjunct of the interstate commission, the Commonwealth parliament can go no further than to provide a court for disputes extending beyond the limits of one state (constitution sec. 51, subsection xxxix). Under this authority were passed the Commonwealth Conciliation and Arbitration Act 1904, and the Amending Act 1909.

The objects of the main act as distinctly set forth are: to prevent strikes and lockouts; to constitute a federal court of arbitration with power to provide for the amicable settlement of disputes; and failing of such settlement to make an award; to make and enforce agreements between employers and employees; to enable states to refer to it; and to encourage organizations of employers and of employees, who may approach the court with disputes. It will be noted that the provisions of the chief federal act correspond to some extent with those of the New South Wales acts of 1902-9.

The federal court of arbitration established by the act consists of a president, who is to be a judge of the high court of Australia, who may appoint assessors and a deputy, if necessary, It is endowed with very large powers. Thus its decisions prevail over those of the state courts, which are also required to cease dealing with any dispute at its request. Its awards are not challengeable by any other court, though the president may state a case for the opinion of the high court. The jurisdiction of the court is very wide, extending to the settlement of all industrial disputes, these, of course, must reach beyond the limits of any one state to come within the jurisdiction of the court. But it is to be noted in this connection that the term "industry" is not to include agricultural, dairying and domestic pursuits. The jurisdiction extends to the reconciliation of disputes of which the court has not official cognizance. Reconciliation is to be affected by unofficial suggestions made by the court. If, as a result, settlements are come to, these if the court is satisfied have the force of an award, save as to continuance, as under the state system.

If the parties fail to adjust their differences, these may be settled by reference to the court. The court is to have cognizance of a dispute on the certificate of the registrar under the act, on submissions by an industrial organization or by a state. Reference of a dispute to the court by an organization without the approval of the president is not allowed unless the registrar certifies to the submission of the dispute by an organization, such submission being made by resolution of the members of the organization and given in writing. The court is to hear every dispute of which it has cognizance. After hearing, the court proceeds to make the award. These awards, which are to continue until altered, but in any case no longer than five years, are binding on the parties before the court, on all organizations of employers and employees which are declared to be bound by a "common rule," and, necessarily, on all the members of the organizations bound.

Organizations may enter into industrial agreements between themselves, which, subject to supervision by the court, may continue in existence for three years. These are only to affect the organizations concerned. They may be rescinded or varied by the parties, or by the order of the court in accordance with a common rule. These,

as is the case with awards made by the court, are to be filed at the registries, and are to constitute evidence of an award when sealed by the registrar.

Besides these powers the court has, in addition, certain special powers. In relation to its informal reconciliation of parties, the court may refer disputes to conciliation committees of employers and employees in equal number, to a local industrial board which may consist of a state industrial authority or a board constituted by the federal court for report. The court further has power to fix and impose penalties, to declare a "common rule," dismiss disputes dealt with by state authorities, to vary its orders, to declare a minimum wage, and order preference to be given to members of organizations by employers. Further features distinguish the federal arbitration court from other tribunals. Thus it is not to regard technicality, legal forms, or the rules of evidence; no party is to be represented before it by counsel save by the consent of all parties or of the president; it may vary its orders, or correct or waive any error.

The act forbids in express terms strikes or lockouts under a penalty of £1,000. Persons refusing to accept an award of the court are deemed guilty of striking and so brought within reach of this penalty, as are organizations directing their members to refuse an award. In proceedings for the recovery of this penalty, which can only be brought by the permission of the president, the onus of proof lies on the defendant.

The organizations are industrial unions created by the act, inasmuch as they alone can approach the court in reference to a dispute. To take advantage of this capacity the organizations have to fulfil various conditions. The most important of these are that organizations, whether of employers or of employees, must consist of 120 members; they must be registered; and their funds must not be used for political purposes. The political purposes for which such funds are not to be used are declared not to include the prosecution of such aims as the preservation of life, regulation of hours of labor and of rates of pay, and conditions of employment generally. Organizations are also endowed with the capacity of acquiring property, and of recovering fines and penalties under the act.

With respect to registration the act provides for the establishment of industrial registries, at which organizations may be regis-

tered and to which they must make returns of members, accounts, etc. Registration may be refused if there is already registered an organization on similar lines to the one making application. After being registered industrial unions may be struck off the lists by the court on its own initiative, or after hearing application by the registrar. Such application for cancellation of registration may be made on the grounds of an organization being wrongly registered, of its rules no longer complying with the provisions of the act, of its rules not making provision for the admission of new members or of its having neglected the orders of the court. Apart from the provisions for registration the governor general may proclaim organizations.

Due provision is made that the authority of the court shall be upheld. The court has the power to make orders for the observance of its awards, failure to comply with which involves liability to a penalty of £100, or to three months' imprisonment.

Penalties imposed by the court may be filed in the state courts by the registrar and they then take effect as judgments of the latter. Process may be issued against the property of an organization, and where this is insufficient to meet the penalty the members of the organization are liable. An organization committing a breach may be sued before the courts of summary jurisdiction, and the penalty is recoverable by the registrar or a member of such organization. A wilful default to observe an award by a member of an organization may be visited with a deprivation of rights under the act, with direction to cease being a member, and to lose rights of payments out of the funds of the organization.

Operation of the Industrial Arbitration Laws

During the last decade Australia has enjoyed a far greater measure of industrial peace than the countries of the West. Without doubt the greatest factor in producing this result is her industrial legislation. This is not to say, however, that industrial disputes have ceased—such an end is as yet visionary; but the provision which has been made for the peaceful settlement of industrial differences has had its effect. Ability to have resort to such provision is preventive of strikes and lockouts in a measureless degree. Where such resort is made not only are incipient disputes nipped in the bud, but the ill-feeling consequent upon opposition is averted. These are

the lines on which industrial arbitration is leading industry in Australia—strikes are becoming of rare occurrence, and the interests of industrial units, formerly antagonistic, tend to a closer mutuality. It cannot be laid down that, during the period of the adoption of arbitration in Australia, a definite number of open quarrels were prevented. But indirectly the measure of industrial peace that has resulted may be gauged from the resort made to the provisions of the various statutes in that connection.

First, as regards wages boards: The wide use made of these institutions may be gathered from the following table, which, except in the case of Queensland, includes results to the end of 1908:[1]

	Total registered trades.	Trades under boards.	Employees under boards.	No. of determinations.
Victoria	162	59	88 per cent	49
Queensland[2]	56	29	..	23
South Australia[3] ..	74	24	62 per cent	20

Secondly, with regard to the Industrial Disputes Act of 1908, in New South Wales, embodying results from the inception of the act to the beginning of June, 1910:

Number of applications for boards	155
Number of boards appointed	139
Number of boards dissolved	26
Number of determinations:	
(*a*) Of boards	90
(*b*) Of boards re-enacting awards of court of arbitration	20
(*c*) Of boards varying or amending awards of boards..	42
Number of boards now sitting	17
Number of hearings not yet begun	10

Thirdly, with regard to the arbitration acts of New South Wales and Western Australia to end of 1908: In New South Wales, 86 agreements were registered under the act of 1901, affecting 38,000 employees. Here, too, 252 industrial disputes were filed; 130 awards were made and the remainder of the disputes were withdrawn or removed. Fifty-five awards have been made common rules.

In Western Australia, 54 industrial agreements were made up to

[1]From Official Year Book of Commonwealth, 1909.
[2]Metropolitan area only.
[3]As at 31st October, 1909.

the end of 1908, affecting 16,000 employees. Of industrial disputes, 252 were filed, in which 71 awards were made.

It can thus be seen, from the number of peaceful adjustments of differences that have been made, how very greatly the systems of arbitration in vogue in the different states make for industrial peace. The position of the operative has been improved beyond all measure throughout the centres of industry. It would be too lengthy a process to quote concrete instances of this betterment; it is sufficient to say that the aim of insuring to the worker a "living wage" has been, and is still being, maintained in Australia, together with the procuring of better conditions of labor.

Yet the question of securing industrial peace indirectly does not embrace the question as to whether industrial arbitration, in Australia, is really compulsory. From a survey of strikes which have occurred during the last ten years, there cannot be said to have been a struggle having for its vital issue the ability of a state authority absolutely to prohibit strikes and lockouts. The last strike in New South Wales, that of the Newcastle coal miners, which, regarded in a particular light, may have seemed a victory for the community, as opposed to a recalcitrant adversary, was really no more than an indication of the advance of the educative process by which the whole community will ultimately condemn striking. That there has been no struggle on the vital issue is due to the wise hesitation, conscious or unconscious, of those in authority to risk prematurely the whole compulsory arbitration movement.

In the meantime public opinion is growing, fostered in many ways. In the first place it has been made clear to every operative that better and more permanent conditions of labor can be obtained by a peaceful award than by a strike. The tribunals before which the disputes come can be relied on as being utterly impartial—they are either presided over by a judge or subject to judicial appeal.

Secondly, what is perhaps of most importance in this connection, the labor party in Australian politics exhibits great and increasing prominence. In some states labor ministries are in power,[4] while in the commonwealth parliament itself, as the result of the 1910 elections, the labor party has a sweeping majority in both the Senate and the House of Representatives. In states where non-labor min-

[4] As a result of the last elections, October, 1910, a labor ministry is now in power in New South Wales.

istries hold power, the labor minority is sufficiently strong to exercise a loud voice in public affairs. The members of these labor parties are tried upholders, where not actually members, of the very industrial unions encouraged by the various arbitration acts in Australia. And the presence of such men in the houses of legislatures, educated by the responsibility which devolves upon them as holders of office, or as members of an important party in opposition, is the strongest guarantee of industrial peace generally, and of the final enforcement of the prohibition of striking. In the late Newcastle coal dispute the weight of the labor members of parliament was against the strike; that the trouble did not extend to other industries was due to the exertions of members of the political labor party. It is true that the representatives of labor in the New South Wales parliament bitterly opposed the Industrial Disputes Amendment Act of 1909. It is true that they have the repeal of this act in their platform for the forthcoming state elections. But it is also true that they attack it because of the large amount of discretionary authority it leaves in the hands of subordinate police officers; and because it derogates from the system of trial by jury. There is no reason to suppose that the aspect of the New South Wales labor party on the question of the coercion act indicates any tendency towards retrogression as regards the prohibition of striking. The danger that may seem to work upon the rise into power of labor majorities in the legislatures—that they may become the creatures of the electoral majority—has not yet shown itself insofar as experience goes. Nothing but good, so far at least as compulsory arbitration is concerned, would seem to be likely from increased labor prominence in politics.

So the education of public opinion proceeds. Considering the industrial peace of the last ten to fifteen years, and the present outlook, its progress has been rapid indeed. It is not altogether vain to visualize the day when compulsory arbitration shall have proved its name.

Considering the objection to industrial arbitration that improved conditions of labor increase the cost of living, the attempts made to insure that the position of the worker shall not be prejudiced through the latter are worthy of note. In some of the arbitration acts and in the Commonwealth Anti-Trust Act provision is made for the preven-

tion of "combinations in restraint of trade"—an indirect attempt to decrease the profits of capital. A direct attempt at the same end was made in the Commonwealth Excise Tariff Act, 1906. By this act an excise duty of one-half the duty payable on imported agricultural machinery was imposed upon similar machinery manufactured in Australia. But it was provided that the latter should be exempted from excise if manufactured under conditions in accordance with an award under the Commonwealth Concilation and Arbitration Act, 1904. By the Customs Tariff, 1906, a maximum price at which such manufactured machinery should be sold was fixed, with a proviso that if sold at a higher rate the commonwealth executive should have power, by reducing customs duties, to withdraw the tariff protection. These acts together embrace what is known as the "New Protection," but their provision has been declared invalid by the High Court of Australia. It is worthy of note that there is a possibility of a referendum being taken with regard to the amendment of the constitution of the commonwealth to render the new protection operative.

There is not the slightest cause for doubt on the question of capital having been diverted from Australia on account of the adoption of compulsory arbitration. Industrial peace is a stronger magnet than the results of "*Laissez faire*," as investments in Australian ventures show.

Conclusion

On the whole compulsory arbitration in Australia has been an undoubted success in so far as results can be judged during the comparatively short time the system has been in operation. In New Zealand, where it has been in vogue longer than anywhere else, the success has been unqualified. True the strength of the system has never been tested. There has been no decisive struggle between masters and men. But the absence of such a struggle is in itself a sign of efficiency, and of the satisfaction given to both the factors in industrial prosperity.

In New South Wales and the other states of Australia strikes have not been prevented, but certainly their number has been diminished, and, most important of all, the condition of the workers has been improved. This improvement continues, and with it it is

certain that arbitration as a part of daily life will grow to be more and more an accepted fact in the minds of the community.

Of course the reason for this success may lie in the fact that, in Australia, industry is centralized. It is notable that the conditions of agricultural laborers are the only ones that the commonwealth act does not profess to touch; and it is in the ranks of these workers that sweating and similar evils exist to a large extent. It has been found extremely difficult to get anything like a uniform rate of wage and number of hours of employment suitable for this class.

There can be no doubt that compulsory arbitration with its concomitant awards rests on a sound basis. It is the business of law in every department of life to see that reasonable expectation is fulfilled. The employer has the right to expect that the conditions under which he contracts are likely to have some continuance; just as the employee has the right to expect that the conditions under the expectations of which he makes out his scheme of life will have some degree of permanence. That the legislature in providing means for the satisfaction of each of these reasonable expectations is going beyond its sphere of action will hardly be maintained by the most ardent opponent of state interference.